

SERVICE PROVIDER CONTRACT INTERNET SERVICE

This agreement for providing Internet services ("Agreement") is entered into February 10, 2006, between Lakeshore Northeast Ohio Computer Association ("Provider") and East Cleveland City Sch Dist ("Customer"), as verified by the signatures on the signature page below.

WHEREAS, Provider is a regional computer services provider organized by the State of Ohio to provide communications and other technology services, and;

WHEREAS, the Customer is a School District or School certified for instruction by the State of Ohio, and;

WHEREAS, the Provider through its technology center desires to provide to Customer and Customer desires to secure from Provider the services detailed in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agree as follows:

I. DEFINITIONS:

As used in this Agreement the following terms shall be defined as follows:

"Customer" shall mean a public or private school or school district that has agreed to the terms and conditions of this Agreement.

"Provider" shall mean the regional computer services provider.

"Services" shall mean all of the duties and ministrations affirmatively checked in Article III Performance of this Agreement.

"User" shall mean a school or person authorized by a school to make use of the data services or equipment secured by Customer from Provider by this Agreement.

II. TERM AND RENEWAL

This Agreement shall be for the period beginning July 1, 2006 and ending June 30, 2007, with the option for two annual renewals terminating June 30, 2009.

III. PERFORMANCE

Provider shall furnish Customer Internet access services with the following terms and conditions. Charges will be incurred for only those Services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below. Any additional services will be billed monthly as incurred.

1. **Services and Charges**

Charges will be incurred for only those services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below.

INTERNET ACCESS SERVICES DESCRIPTION	ANNUAL CHARGE	QUARTERLY CHARGE
Internet Service	\$34,596.00	\$8,649.00

2. **Additional Charges**

Customer agrees to pay the Provider for any installation costs, if incurred, as a result of providing Services to Customer.

3. **Provider's Obligations**

- a) Provider will provide sufficient training of Customer's personnel to permit Customer to perform all functions and procedures associated with the Internet Access connection.
- b) Provider will plan and coordinate all activities incidental to the implementation of the Internet access connection.
- c) Provider will assume all responsibilities for the physical Internet access system excluding the customer's internal network.
- d) Provider shall provide support for its services during its normal business hours, defined as 8:00 a.m. EST to 4:30 p.m. EST, Monday through Friday exclusive of holidays as established by the Educational Service Center of Cuyahoga County.
- e) Upon request from the Customer, Provider may provide service and support outside normal business hours. Such service shall be provided at the sole discretion of the Provider and at an additional cost to the Customer agreed upon in writing prior to the service being provided.
- f) Provider shall make every effort to maintain a minimum network availability of 98% during regular business hours. Provider shall make every effort to maintain network availability of 90% outside of regular business hours exclusive of regularly scheduled maintenance and backup.

- g) Provider shall complete system maintenance, system upgrades and system installations affecting system availability outside normal business hours unless any such maintenance, upgrade or installation is necessary because of an unexpected system failure caused by events beyond Provider's control, or supporting vendors are not available outside normal business hours. Notification of every planned system outage shall be made at least twenty-four (24) hours in advance of the outage. Notification of system maintenance, system upgrades and system installations affecting system availability will be provided to the designated Customer representative via e-mail and in the system greeting displayed during system logon. In the event of an unexpected system failure, Provider will contact a designated Customer representative via telephone to advise when the system is available for use.
- h) If requested by the District in writing, LNOCA shall plan and coordinate the District's ordering and installation, at the District's cost, of proper equipment and telephone lines, and shall provide information to the District to assist in obtaining necessary forms.
- i) Quality of service shall be determined by an overall customer satisfaction of 80% or greater. Provider shall evaluate the quality of service via any of the following:
 - 1. Quarterly Advisory and Board of Director meetings;
 - 2. Periodic customer surveys;
 - 3. Training evaluation forms;
 - 4. Other methods as determined appropriate.

4. Customer's Obligations

- a) Customer will assume all responsibilities for all local area networks (LAN) connected to an Internet access connection. These responsibilities include, but are not limited to, Customer-owned communications equipment/cabling, LAN software, and LAN hardware.
- b) Customer will provide surge suppression for all devices either directly or indirectly connected to the Internet access connection. The surge suppression must meet UL1449 rating.
- c) Customer will make its personnel and records available to the extent necessary to facilitate the planning, training and implementation process of the Internet access connection.
- d) Customer will provide the Provider with appropriate and sufficient space and electrical power to facilitate the Internet access connection installation.
- e) Customer agrees not to connect any of its local area networks to alternative Internet service providers without the Provider's written approval.
- f) Customer agrees not to resell any Internet access services provided by the Provider.
- g) The Customer shall make its personnel and records available to LNOCA to the extent necessary to facilitate the planning, training and implementation process.
- h) The Customer shall participate in quality of service measuring activities as outlined previously, including but not limited to, Advisory meetings, periodic customer surveys and training evaluation forms.
- i) The Customer shall contact Provider personnel or representatives in the following order as needed regarding service issues:
 - 1. Provider's designated Support Personnel via e-mail or telephone;
 - 2. Provider's designated Coordinator responsible for the Service Area via e-mail or telephone;
 - 3. Provider's designated Assistant Director responsible for the Service Area or LNOCA's Technology Director via e-mail or telephone;
 - 4. Provider's Executive Director via e-mail or telephone; and
 - 5. Provider's Chairman of the Board of Directors via e-mail or telephone.

IV. CHARGES AND PAYMENT

Customer agrees to be solely responsible to Provider for all charges billed by Provider for Services provided to customer under this Agreement. Charges for the Services provided under this Agreement will be billed to Customer on a quarterly basis.

Payment of all invoices sent shall be due within 30 days of the send out date on the Customer's receipt invoice. Provider may at its sole discretion terminate or suspend the Services to any Customer whose payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights the Provider may have for full payment. If the Customer is suspended, there may be a reconnection fee to cover the administrative cost of reconnection. The reconnection charge shall be in addition to amounts due for unpaid balances and/or the above described service charges.

V. WARRANTIES AND LIMITATIONS ON LIABILITY AND INDEMNIFICATION

A. Providers shall be liable to Customer for failure to provide Services, but only if such failure(s) is due to the negligence of Provider and not excused by either of the following: 1) Provider shall not be liable for any damages incurred as a result of the errors, omissions or negligence of Customer, its personnel, employees, agents or users. 2) Provider shall not be liable for failure to perform if such failure is caused by acts of God, winds, fires, landslide, floods, droughts, famines, acts of public enemies, insurrection, military action, sabotage, riots, or civil disturbances, failure of a utility or utility type service which is essential to the Provider's Service or other event(s) not reasonably within the control of the Provider.

B. Customer may utilize the Services provided for educational and educational administrative related activities only. Where the Services provided include access to the Internet networks, Provider does not warrant that the functions of the Internet network will meet any specific Customer or user requirements, or that Services provided will be error free or uninterrupted; nor shall Provider be liable for any actual damages or any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation) sustained in connection with the use, operation, or inability to use the Provider Services by Customer or its users. Further, Customer understands and agrees that Provider will exercise no control over the information that Customer and users may transmit and access as a result of the provision of Services by Provider and that, therefore, Customer will make no claim against Provider for the Internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Unless special arrangements are made and appended to this Agreement, Provider will not routinely monitor Customer's activities or pupil access to any of the interconnected systems. Any filters or screening devices are limited to those in existence at the date of this Agreement or for which Provider subsequently installs. Provider is not under any duty to install or modify filters or screening programs. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems. Some material contained in the interconnected systems may be inappropriate for school aged pupils.

C. Customer, directly or through its agents, permitting pupil access to the interconnected computer system(s) of the Internet through Provider assumes full responsibility for any and all access to and usage of information contained on the interconnected computer system(s) of the Internet.

D. CUSTOMER AGREES TO INDEMNIFY AND HOLD PROVIDER, ITS GOVERNING BOARD MEMBERS, OFFICERS, MEMBERS, EMPLOYEES AND/OR AGENTS HARMLESS FROM ANY CLAIMS, SUITS, LIABILITY, LOSS, EXPENSES AND/OR DAMAGES, INCLUDING ALLEGED COPYRIGHT AND OTHER INTELLECTUAL PROPERTY CLAIMS, SUSTAINED BY ANY PERSON BY REASON OF ANY ACT OF CUSTOMER OR ITS USERS IN THEIR ACTIVITIES INVOLVING USE OF PROVIDER'S NETWORK.

E. Provider reserves the right to discontinue Customer's access to the Provider's Service and/or seek other legal or equitable relief for use of the Services that Provider deems to be in violation of the rules and regulations of the State Board of Education; or in violation of this Agreement; or violate state and federal law; or are uncivil. For purposes of this Agreement, uncivil conduct includes but is not limited to: 1) transmitting offensive or harassing statements; 2) developing and/or transmitting offensive or unlawful graphics; 3) transmitting sexual or ethnic slurs explicitly or as part of a joke; 4) soliciting or encouraging others to engage in sexual, offensive or unlawful acts; or 5) permitting or encouraging unauthorized access to the Providers network and public networks including access to the Internet.

F. Customer understands and agrees that Provider shall have no responsibility for Customer's or its users' accessing or transmitting offensive or unlawful information, interference or unlawful access to others' information or networks, or other offensive or unlawful activity in which Provider's Service is used.

G. Although Provider does not have a duty to monitor Customer or its Users' transmissions, it shall not be prohibited from monitoring.

VI. PROPERTY

A. All written procedures and similar items utilized or developed in connection with this Agreement, residing with Providers, are not to be considered the property of Customer.

VII. CONFIDENTIALITY OF INFORMATION

A. Provider shall exercise ordinary care in preserving and protecting the confidentiality of information and materials furnished by Customer.

B. Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.

C. Except as required by law, Customer agrees not to disclose any information or documentation obtained from Provider.

VIII. NOTICES

A. All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as the party may designate by notice to the other party hereto):

1. If to Provider:

Name: John W. Mitchell
Executive Director
Lakeshore Northeast Ohio Computer Association
Address: 5700 West Canal Road
City/State/Zip: Valley View, Ohio 44125
Phone: 216-520-6900
Facsimile: 216-520-6969
E-mail: John.Mitchell@LNOCA.org

2. If to Customer:

Name: _____
Title: _____
Organization: East Cleveland City Sch Dist
Address: _____
City/State/Zip: _____
Phone: _____
Facsimile: _____
E-mail: _____

B. GENERAL PROVISIONS

- a. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.
- b. **Waiver, Discharge, etc.** This Agreement may not be released, discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, the term of any purchase order, invoice or like document issued in conjunction with the Service to be provided herein shall not serve to add to or modify the terms of this Agreement.
- c. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.
- d. **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.
- e. **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- f. **Entire Agreement.** This Agreement, together with the documents referred to herein,

shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.

- g. **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
- h. **Construction.** This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in this Agreement, the word "including" shall mean including without limitation. Unless the context requires otherwise, any reference to the masculine, feminine and neuter genders include one another.
- i. **Compliance with Law.** Each party agrees to comply with all governmental laws and regulations applicable to the Services contemplated by this Agreement. Customer agrees to provide such written evidence of the approval of this Agreement as may be required by law.
- j. **Fully Understand and Freely Enter.** The undersigned hereby acknowledge that they have read and understand the foregoing. The parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.

By signing below, Signatory of Customer ("Signatory") certifies authorization to sign on behalf of Customer and certifies having read, understood and agreed to the terms of this Agreement. Signatory certifies that all information provided by Customer in connection with this Agreement is true and accurate. If Customer is a Board of Education of a school district (a political subdivision of the State of Ohio), Signatory certifies that this Agreement has been approved by formal resolution of its Board of Education; if Customer is another educational entity, Signatory certifies that the Agreement has been approved by formal action of its Board.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

CUSTOMER:

East Cleveland City Sch Dist

Printed name of Customer

Myrna Loy Corley

Signature of Officer or Manager for the Customer

February 10, 2006

Date

Myrna Loy Corley

Printed name of Officer or Manager for Customer

February 10, 2006

Date

Signature of Officer or Manager for the Customer

Printed name of Officer or Manager for Customer

PROVIDER:

Lakeshore Northeast Ohio Computer Association

Printed name of Provider

John W. Mitchell

Signature of Officer or Manager for the Provider

February 10, 2006

Date

John W. Mitchell

Printed name of Officer or Manager for the Provider